

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 92-1012 CS

Controlled Substance Excise Tax

For Tax Period: October 27, 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On October 20, 1992, taxpayer was arrested by the Brown County Sheriff's Department for possession of marijuana. The Department assessed the controlled substance excise tax against the taxpayer on October 27, 1992. The assessment was based on a weight of 305.00 grams of marijuana. Taxpayer protested the assessment.

An administrative hearing was held on May 21, 1998. Taxpayer was given more than six months to submit evidence to support his protest. Taxpayer failed to provide any subsequent evidence. Additional relevant information will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 305.00 grams of marijuana.

At the administrative hearing the taxpayer argued the marijuana was not found on his possession nor grown on his property. Taxpayer was to submit evidence of ownership of the property as well as an affidavit from another party admitting possession of the marijuana. Taxpayer failed to submit any of this evidence.

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer has failed to prove the assessment invalid.

FINDING

Taxpayer's protest is denied.